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Summary record of the 3099th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 8 October 2014, at 10 a.m.

Chairperson: Sir Nigel Rodley

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The meeting was called to order at 10.10 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant *(continued)*

Fifth periodic report of Sri Lanka (continued) (CCPR/C/LKA/5, CCPR/C/LKA/Q/5, CCPR/C/LKA/Q/5/Add.1 and HRI/CORE/LKA/2008)

1. *At the invitation of the Chairperson, the delegation of Sri Lanka took places at the Committee table.*

2. **Mr. Goonetilleke** (Sri Lanka) said that, pursuant to article 363 of the Criminal Code, a man who had non-consensual sex with his wife was considered guilty of rape, on condition that the spouses were legally separated. In cases where the spouses were not separated, charges could be brought for domestic violence if the rape had been accompanied by violence. Steps had been taken to increase the public's awareness of workplace violence and sexual harassment, and the Women's Bureau was also conducting awareness-raising activities, particularly among hospital staff.

3. **Ms. Tillekeratne** (Sri Lanka) said that the committee responsible for reforming the Muslim Marriage Act, chaired by a Supreme Court judge and comprising magistrates, lawyers, human rights specialists and eminent persons in the Muslim community, included three women members.

4. **Mr. Ruwachandra** (Sri Lanka) said that Sri Lanka rejected the allegations of violence and violations of the right to life contained in paragraph 9 of the list of issues. Where credible evidence existed, police officers accused of violence and extrajudicial killings were prosecuted and punished. Several trials were under way, including in the case involving fatal shots being fired by the police in Katunayake in May 2011. In April 2014 the Supreme Court had confirmed the sentence passed on four police officers accused of the abduction and murder of two persons. The criminal justice system and the Sri Lankan Criminal Code adequately covered such acts, and the required procedures for arrest and detention were clearly defined in departmental orders.

5. **Mr. Pulle** (Sri Lanka) said that charges had been brought against 13 persons in 2013 for the deaths of 5 students in January 2006. The trial had been suspended in order to locate a number of witnesses who had gone abroad. As for the murder of 17 employees of the French non-governmental organization International Action against Hunger in 2006, the Attorney-General had ordered an investigation and efforts were currently under way, in collaboration with the French diplomatic service, to gather statements from persons residing in France.

6. **Mr. Aryasinha** (Sri Lanka) said that bringing cases relating to internal military affairs before a military court was a universally recognized practice, including in the Hague and Geneva Conventions, and that military judgements handed down by courts in Sri Lanka could be appealed before the civilian courts. As for the alleged civilian casualties and the facts reported in the Channel 4 documentary, a military commission of inquiry had been set up even prior to the adoption of the national plan to implement the recommendations of the Lessons Learnt and Reconciliation Commission, which clearly demonstrated the Government's determination to investigate the matter. Investigations had shown that the Sri Lankan army had acted with discipline and restraint, while the terrorists of the Liberation Tigers of Tamil Eelam (LTTE) had committed war crimes by using civilians as human shields, using safe zones for military purposes, and forcibly enlisting children and older persons. Civilian casualties were, therefore, attributable to LTTE activities, and not to the Sri Lankan armed forces. The commission of inquiry was continuing its investigations, despite the refusal of Channel 4 to provide the original recordings and other useful items to

the investigation. The commission of inquiry's reports were confidential, but a summary of their findings had been made public.

7. In 2013, a commission had been established to investigate cases of disappeared persons in the Northern and Eastern Provinces and the civilian casualties incurred during the armed conflict that had ended in 2009. The commission's work was still continuing and contributed to the reconciliation efforts, which excluded international interference. In that regard, Sri Lanka rejected any reference to the report of the Secretary-General's Panel of Experts on accountability in Sri Lanka, which had not been approved by any intergovernmental body, and had no formal status within the United Nations.

8. **The Chairperson** said that Committee members had the right to take into account any source of information they considered appropriate, regardless of the opinion held by the State party's Government about its creditability.

9. **Mr. Neuman** asked whether the definition of torture contained in the Criminal Code included rape. He pointed out that the lack of information concerning the investigation, conviction and sentencing of torture reinforced suspicions of impunity. Noting that the Committee against Torture had already expressed concerns about that issue in its concluding observations of 2011 (CAT/C/LKA/CO/3-4), he asked whether the delegation had any information to show that the situation had since improved. As for arbitrary detention, he said that the drafting of a bill, whose adoption and application were not guaranteed, did not constitute an adequate response. Many shortcomings had been noted in respect of access to a lawyer and a doctor and the lack of a central register of detainees, and, according to some reports, persons had been held in unofficial places of detention. He asked the delegation to clarify whether the witness protection bill had been adopted and, if so, whether the adoption of that instrument had produced a tangible impact. Similarly, he requested further information on the measures taken to reduce prison overcrowding through alternative sentences, such as house arrest. Information on measures taken to reduce the use of pretrial detention, establish an independent mechanism for monitoring detention conditions, and speed up legal proceedings would also be welcome. Recalling the concerns expressed by the Committee in its previous concluding observations about the independence of the judiciary in Sri Lanka, he pointed out that a judge had been removed from office by Parliament in October 2012 and replaced by a close advisor of the President. Noting that the Supreme Court had been content to declare itself incompetent to judge the constitutionality of the procedure in February 2014, he asked what steps the Government intended to take to restore confidence in the independence of the judiciary.

10. **Mr. Iwasawa** asked the delegation to comment on the fact that the human rights situation in the country did not seem to have improved, despite the fact that the armed conflict had ended in 2009, and on reports that the adoption of the eighteenth constitutional amendment in 2010 had weakened the institutional human rights protection framework. Noting that the Government intended to raise the age of criminal responsibility, which was currently set at 8 years, he enquired as to when such a step would be taken and what the delegation understood by "an internationally acceptable age". He also asked the delegation to reply to concerns raised regarding criminal justice, detention conditions and alternative sanctions for minors.

11. Noting that corporal punishment was prohibited in schools and that there was an instructors' training programme addressing non-violence and positive methods of discipline, he requested clarification of what the State party meant by the phrase "non-violence and positive methods of discipline". He also wished to know more about the issue of corporal punishment in the family and requested data concerning cases of violence against children in child protection institutions. Lastly, he enquired whether the Sri Lankan Government had taken steps to combat child labour.

12. **Ms. Seibert-Fohr** asked the delegation to provide statistical data on any cases in which persons had been found guilty of human trafficking and had subsequently been convicted and punished. She wished to know whether the State party had taken measures to prevent such acts and to protect and assist victims. She also asked the delegation to provide assurances to the Committee that no person in Sri Lanka would be subject to criticism or reprisals for disclosing information to the Human Rights Committee. Furthermore, she requested details of the investigations into the assaults suffered by members of the media and human rights defenders and their findings. She asked the delegation to comment on allegations that demonstrations against the Government, in particular in the Northern Province, had been monitored by the intelligence services, and that protestors had been dispersed or threatened by the police. Lastly, noting that some news websites had been blocked, she enquired as to the legal basis for those types of restrictions.

13. **Mr. Flinterman** asked whether article 12 of the Constitution prohibiting discrimination could be invoked by lesbian, gay, bisexual and transgender persons in appropriate circumstances in order to lodge a complaint with the Supreme Court regarding their fundamental human rights. He also wished to know whether the State party intended to repeal discriminatory laws which required women to obtain written consent from their husbands before they could sell their immovable property. He also asked whether the draft master plan for the resettlement of displaced persons had been adopted and whether it provided lasting resettlement solutions.

14. **Mr. Shany** asked why, in the so-called "Trinco 5" case, involving 5 boys killed in Trincomalee in 2006, the authorities had questioned the suspects only seven years after the event, and why the 12 police officers arrested had been immediately released on bail. As for the alleged war crimes committed during the armed conflict which had lasted for over 30 years in Sri Lanka, he questioned the credibility of a State establishing a military commission of inquiry in order to investigate policies believed to have been authorized by the highest military authorities. He questioned, in particular, whether the commission would be able to investigate the allegations of General Fonseka concerning the involvement of the Ministry of Defence in certain decisions regarding the treatment inflicted on LTTE leaders. He asked whether the State party would fulfil its international obligations and conduct a thorough and impartial investigation into the allegations of serious human rights violations committed during the armed conflict. He also called on the delegation to provide additional information on legal proceedings taken against General Fonseka, given the short time elapsed between the General's participation in the 2010 elections and the instigation of legal proceedings, and the vague nature of the claims against him, such as contempt of a military authority order prohibiting political activities, sedition and dishonourable conduct.

15. As for the act of 2011 that on the recovery of businesses displaying unsatisfactory results and underutilized assets, he asked the delegation to indicate whether clear criteria existed to assess the results of an underperforming business and to determine the extent to which such businesses had a negative effect on the national economy. The delegation was also invited to comment on reports that the law had been applied in a discriminatory manner against the commercial interests of persons belonging to, or associated with, opposition groups, and to indicate what safeguards had been incorporated to prevent any misuse of the act.

16. Recalling the riots of June 2014 in Aluthgama and Beruwala following a rally organized by the Buddhist group Bodu Bala Sena, during which many Muslims had been attacked, he asked the delegation to respond to allegations that the police had failed to halt the gathering despite the obvious risk of violence, had not taken the necessary precautions to prevent a disturbance and had failed to intervene to stop the violence. The delegation should also explain why so few perpetrators of acts of violence based on ethnic origin had

been prosecuted, and respond to concerns regarding the discriminatory treatment and repression of religious minorities in the State party.

17. **Ms. Chanet** enquired as to the exact nature of the charges brought against the President of the Supreme Court, Shirani Bandaranayake, who had been indicted and dismissed in 2013, to justify disciplinary proceedings against her, and whether the procedure followed in her case was in compliance with the Constitution.

18. **Mr. Zlătescu**, noting that the media in the State party faced censorship and that journalists were subject to intimidation and persecution if they spoke out against Government policy, asked what steps would be taken by the State party to guarantee the freedom of the press and promote the development of civil society. He also wished to know whether investigations had been conducted into the reported disappearances and murders of journalists and whether reparations had been offered to the families of the victims.

19. **Mr. Seetulsingh**, recalling the State party's refusal to cooperate with the Human Rights Committee on communications from Sri Lankan nationals following its adoption of Views on 21 July 2014 on the *Singarasa v. Sri Lanka* case, asked the delegation to refer the matter to the State party authorities for them to reconsider their position.

20. He expressed surprise at the provisions of article 4 of the Constitution, according to which the judicial power of the people was exercised by Parliament through the courts, contrary to the principles of separation of powers and the independence of the judiciary. He would like the matter to be reviewed by the authorities of the State party.

21. **The Chairperson** asked whether, in the case of the murder of 17 persons working for International Action against Hunger in 2006, and in the "Trinco 5" case, the Government was prepared to allow witnesses, who had fled abroad for safety reasons, to testify remotely via audio or video link, without revealing their exact location. He also wished to know whether the Sri Lankan commissions of inquiry into the serious human rights violations committed by an administration established by that very same administration, had shed light on the fate of disappeared persons, or had sought and obtained the prosecution of those responsible for abduction, murder and torture.

The meeting was suspended at 11.50 a.m. and resumed at 12.10 p.m.

22. **Mr. Divaratne** (Sri Lanka) said that a number of the 285 observations and recommendations contained in the report of the Lessons Learnt and Reconciliation Commission were similar and shared the same objectives. The Government had adopted 144 recommendations, which had been consolidated into 5 areas in the Commission's national action plan, namely international humanitarian law, human rights, the provision of land and resettlement, restitution and compensation, and reconciliation. Those recommendations were currently being implemented.

23. **Mr. Sugathadasa** (Sri Lanka) said that, according to a joint study by the Government of Sri Lanka and the Office of the United Nations High Commissioner for Refugees in Sri Lanka, as of 31 August 2014, 220,298 displaced families, including 774,447 persons, had been resettled, and 7,840 families were still waiting, which was equivalent to 3.3 per cent of all displaced persons. The Sri Lankan Government was committed to providing lasting resettlement solutions for all displaced persons and had officially established a timetable to that effect. At the end of August 2014, the number of new houses built to rehouse displaced persons had exceeded 65,000 and more than 9,000 damaged houses had been renovated with financial support from the public authorities and lending agencies. The Sri Lankan Government intended to continue constructing and renovating houses. Returning land and property to displaced persons had begun four and a half years ago. In the Northern Province, less than 3,000 hectares of land were left to be returned, compared to more than 10,000 hectares in 2009. Only some 600 families whose

land had been requisitioned for public purposes had had to settle close to their former homes. Moreover, the resettlement policy fully recognized the principle of gender equality, and all displaced persons, women or men, were entitled to the same benefits.

24. **Mr. Illayapparachchi** (Sri Lanka) recalled that, in a judgement concerning the application of the Covenant, the Supreme Court of Sri Lanka had found that article 16, paragraph 1, of the Constitution, which provided solely for the upholding of existing laws, could not be said to be incompatible with the Covenant on the grounds that certain aspects of personal law were discriminatory against women. The question of legislation touching on personal rights was a very delicate one, and many changes were needed, they should not be imposed by the Covenant, but rather be requested by the sector of the population affected.

25. The allegations that former women combatants had been more exposed to rape and violence were unfounded: the Government had a zero tolerance policy towards sexual violence and inflicted heavy penalties on reported perpetrators. The Government urged the Committee to send it any information available on the subject so that it could launch an investigation and, if necessary, follow up the allegations. The National Women's Committee was responsible for implementing the Women's Charter, which guided the Government's actions in that area. As part of capacity-building efforts, a new chairperson had been appointed to the National Women's Committee; assistance and complaint handling services had been established and in 2014 the committee had been allocated additional funds.

26. **Mr. Goonetilleke** (Sri Lanka) said that the Ministry of Justice had set up a team to combat human trafficking, particularly of women and children, and that assistance and protection were provided to victims and their rights upheld. A reception centre had also been established, which was now fully operational.

27. The Government of Sri Lanka rejected the allegations concerning ongoing violations of freedom of expression, freedom of association and the right to peaceful assembly, particularly against human rights defenders, journalists and their families. Although some cases of violence against members of the media remained unresolved, no restrictions had been imposed on the types of subject that could be covered by the press. He invited the Committee to note the diversity of opinions expressed in the written press and the audiovisual and electronic media, which often harshly criticized the Government. No measures had been taken to censor the press since the current Government had taken office. Parliament had repealed the law on defamation, and persons who considered themselves to be victims of fundamental human rights violations could bring their cases before the courts, the Supreme Court or the National Human Rights Commission.

28. **Mr. Pulle** (Sri Lanka) said that all state organs had a zero tolerance policy towards torture and that the Attorney-General did not defend officials suspected of committing acts of torture. The Government considered that the definition of torture given in domestic law covered all the aspects contained in article 1 of the Convention against Torture. Furthermore, police officers were obliged to provide medical care to those persons under arrest who required it, before bringing them before a judge.

29. The principle of the independence of the judiciary was enshrined in the Constitution and any violation of that principle was punishable. Disciplinary proceedings could be brought against judges for misconduct or incapacity. Only the Supreme Court was authorized to interpret the Constitution and it gave due consideration to the principle of the separation of powers, as embodied in the Constitution.

30. **Mr. Aryasinha** (Sri Lanka) hoped that the Committee was aware of the fact that many other developing countries did not have such positive indicators as Sri Lanka, although it had been forced to combat terrorism for 30 years and had had to fulfil its human

rights obligations under very complex circumstances. Sri Lanka sought to manage its affairs as a "normal" country, despite undergoing a difficult transition period. After weighing up the risks it would entail, the Government had consciously decided to allow displaced persons, including former combatants, to freely choose their place of resettlement. However, it continued to take certain precautions in the Northern and Eastern Provinces, because a large number of LTTE arms and ammunition depots remained concealed there. Lastly, it should be noted that Sri Lanka had duly published the report of the Lessons Learnt and Reconciliation Commission, implemented its recommendations and used it as the basis for a national action plan, the implementation of which had been described in detail to the Committee.

31 **The Chairperson** said that the Committee did not wish to judge Sri Lanka but was not judging Sri Lanka but rather trying to assess the State's implementation of specific provisions of the Covenant, an instrument which the State party had ratified without reservations. The Committee also refrained from making comparisons between States. The Committee's assessment relied on legal, and not political, criteria. The Committee was aware that Sri Lanka was emerging from a bloody civil war, with a group that did not hesitate to use terrorist tactics to achieve its aims. It also recognized the importance of resettlement activities and the positive outcomes of the transition process. However, for decades serious allegations of disappearances, extrajudicial killings and acts of torture committed in Sri Lanka during the conflict and beyond had been submitted to authoritative international organizations, which often judged such allegations to be well-founded. The existence of a zero-tolerance policy was not sufficient if such violations continued to occur, and the steps taken to implement the policy should be reviewed.

32. He recalled that, in regard to personal law, according to article 26 of the Covenant all persons were equal before the law and were entitled without discrimination to equal protection of the law. The provisions of article 27 supplemented those of article 26 and focused on individual rather than collective rights. Lastly, he noted that Sri Lanka did not cooperate with the Committee as far as the individual communications procedure was concerned, despite having deposited the instruments of ratification of the Optional Protocol to the Covenant with the Secretary-General. The Committee would welcome the State party's resumed cooperation under that procedure.

The meeting rose at 1.10 p.m.